

Senate Study Bill 1188 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SCHULTZ)

A BILL FOR

1 An Act relating to the location and marking of underground
2 facilities and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 480.1, Code 2021, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 5A. "*Forty-eight-hour period*" means:

4 a. For a request an operator receives from the notification
5 center on or before 12:00 p.m., a period of forty-eight hours
6 beginning at 12:00 p.m. on the day the operator receives the
7 request.

8 b. For a request an operator receives from the notification
9 center after 12:00 p.m., a period of forty-eight hours
10 beginning at 11:59 p.m. on the day the operator receives the
11 request.

12 NEW SUBSECTION. 5B. "*Locator*" means a person who engages
13 in, or proposes to engage in, the location and marking of
14 underground facilities pursuant to a contract with an operator.
15 "*Locator*" does not include an employee of an operator.

16 Sec. 2. Section 480.4, subsection 3, paragraph a,
17 subparagraphs (1) and (2), Code 2021, are amended to read as
18 follows:

19 (1) An operator who receives notice from the notification
20 center shall mark the horizontal location of the operator's
21 underground facility and the excavator shall use due care in
22 excavating in the marked area to avoid damaging the underground
23 facility. The operator shall complete such locating and
24 marking, and shall notify the notification center that the
25 marking is complete within ~~forty-eight hours after receiving~~
26 ~~the notice~~ a forty-eight-hour period, excluding Saturdays,
27 Sundays, and legal holidays, unless otherwise agreed by the
28 operator and the excavator. No later than the expiration of
29 the forty-eight-hour period, excluding Saturdays, Sundays,
30 and legal holidays, the notification center shall notify the
31 excavator of the underground facility locating and marking
32 status, or the failure of the operator to notify the center
33 that the locating and marking is complete. The locating and
34 marking of the underground facilities shall be completed at no
35 cost to the excavator. If, in the opinion of the operator, the

1 planned excavation requires that the precise location of the
2 underground facilities be determined, the excavator, unless
3 otherwise agreed upon between the excavator and the operator,
4 shall hand dig test holes to determine the location of the
5 facilities unless the operator specifies an alternate method.

6 (2) The marking required under **this subsection** shall
7 be done in a manner that will last for a minimum of five
8 working days on any nonpermanent surface, or a minimum of ten
9 working days on any permanent surface. If the excavation
10 will continue for any period longer than such periods, the
11 operator shall remark the location of the underground facility
12 upon the request of the excavator. The request shall be made
13 through the notification center. The operator shall complete
14 the remarking and the notification center shall notify the
15 excavator of the operator's completion of the remarking within
16 a forty-eight-hour period, excluding Saturdays, Sundays, and
17 legal holidays, unless otherwise agreed by the operator and the
18 excavator.

19 Sec. 3. Section 480.4, subsection 3, paragraph b, Code 2021,
20 is amended to read as follows:

21 b. An operator who receives notice from the notification
22 center and who determines that the operator does not have
23 any underground facility located within the proposed area of
24 excavation shall notify the notification center concerning
25 this determination within ~~forty-eight hours after receiving~~
26 ~~the notice~~ a forty-eight-hour period, excluding Saturdays,
27 Sundays, and legal holidays, unless otherwise agreed by the
28 operator and the excavator. No later than the expiration of
29 the forty-eight-hour period, excluding Saturdays, Sundays,
30 and legal holidays, the notification center shall notify the
31 excavator that the operator does not have any underground
32 facilities within the proposed area of excavation.

33 Sec. 4. Section 480.6, Code 2021, is amended to read as
34 follows:

35 **480.6 Civil penalties.**

1 1. A person who violates a provision of **this chapter** is
2 subject to a civil penalty as follows:

3 a. For a violation related to natural gas and hazardous
4 liquid pipelines, an amount not to exceed ten thousand dollars
5 for each violation for each day the violation continues, up to
6 a maximum of five hundred thousand dollars.

7 b. For a violation related to any other underground
8 facility, an amount not to exceed one thousand dollars for each
9 violation for each day the violation continues, up to a maximum
10 of twenty thousand dollars.

11 c. For a locator's violation related to any time limit
12 in this chapter or any standard established by the utilities
13 board pursuant to section 480.11, an amount not to exceed one
14 hundred dollars for each violation for each day the violation
15 continues, up to a maximum of five thousand dollars. The
16 utilities board shall establish, by rule, a schedule or range
17 of civil penalties that it may assess in accordance with this
18 paragraph.

19 2. The attorney general, upon the receipt of a
20 complaint, may direct the complaint to the utilities board
21 for investigation and may institute any legal proceedings
22 necessary to enforce the penalty provisions of **this chapter**.
23 The attorney general may direct the board to investigate a
24 complaint. After investigating a complaint pursuant to this
25 subsection, the board shall provide the attorney general with a
26 written summary of the investigation and all evidence the board
27 acquired during the investigation.

28 2A. The utilities board may independently receive,
29 investigate, and enforce complaints alleging a violation of
30 section 480.11 pursuant to rules adopted by the board. The
31 board may provide the attorney general with a written summary
32 of the investigation and all evidence the board acquired during
33 the investigation.

34 3. All amounts collected pursuant to **this section** shall
35 be remitted to the treasurer of state, who shall deposit the

1 amount in the general fund of the state.

2 Sec. 5. NEW SECTION. **480.11 Locator certificate.**

3 1. A locator shall not engage in the location or marking
4 of underground facilities on behalf of an operator pursuant to
5 section 480.4 without first receiving a locator certificate
6 from the utilities board.

7 2. The utilities board shall establish, by rule, all of the
8 following:

9 *a.* The procedure for obtaining a locator certificate.

10 *b.* An application for a locator certificate. The
11 application shall require all of the following:

12 (1) A copy of the locator's basic organizational document.

13 (2) If the locator is not incorporated or organized in this
14 state, a copy of the locator's certificate of authority.

15 (3) Information related to the locator's insurance and
16 bonding.

17 (4) Information related to the training utilized by the
18 locator.

19 (5) Information related to the locator's experience
20 locating and marking underground facilities.

21 (6) Information related to complaints the locator has
22 received from an excavator, operator, or any other person
23 related to the locator's services.

24 (7) A statement that the locator agrees to comply with the
25 requirements of this chapter and rules adopted by the utilities
26 board pursuant to this chapter and chapter 476.

27 *c.* Performance standards applicable to locators, including
28 standards intended to ensure locators timely complete their
29 services as required by this chapter.

30 *d.* A schedule or range of civil penalties that the board may
31 assess for violations of this section.

32 *e.* A procedure for the suspension or revocation of a locator
33 certificate.

34 3. A locator who has received a certificate from the
35 utilities board under this section shall not do any of the

1 notification center to mark the location of the operator's
2 underground facility, and notify the notification center that
3 the marking is complete, within a forty-eight-hour period.
4 Additionally, the bill requires the operator to complete any
5 remarking, and requires the notification center to notify the
6 excavator of the operator's completion of the remarking, within
7 a forty-eight-hour period.

8 The bill requires an operator who receives notice from the
9 notification center and who determines that the operator does
10 not have any underground facility located within the proposed
11 area of excavation to notify the notification center within a
12 forty-eight-hour period.

13 The bill provides that if a locator violates a time limit in
14 Code chapter 480, or any standard established by the utilities
15 board, the locator shall be subject to a civil penalty in an
16 amount not to exceed \$100 for each violation for each day the
17 violation continues, up to a maximum of \$5,000. The bill
18 requires the board to establish, by rule, a schedule or range
19 of civil penalties that it may assess.

20 The bill authorizes the attorney general to direct
21 complaints to the utilities board for investigation. The bill
22 provides that, after investigating a complaint, the board
23 shall provide the attorney general with a written summary of
24 the investigation and evidence the board acquired during the
25 investigation.

26 The bill authorizes the board to independently receive,
27 investigate, and enforce complaints alleging a violation of new
28 Code section 480.11 pursuant to rules adopted by the board.
29 Additionally, the bill authorizes the board to provide the
30 attorney general with a written summary of the investigation
31 and evidence the board acquired during the investigation.

32 The bill prohibits a locator from engaging in the location
33 or marking of underground facilities on behalf of an operator
34 without first receiving a locator certificate from the board.

35 The bill requires the board to establish by rule all of the

1 following: a procedure for obtaining a locator certificate, an
2 application for a locator certificate, performance standards
3 applicable to locators, a schedule or range of civil penalties
4 that the board may assess for violations, and a procedure for
5 the suspension or revocation of a locator certificate. The
6 bill provides requirements for the application for a locator
7 certificate.

8 The bill prohibits a locator who has received a certificate
9 from the board from entering into a contract with an operator
10 that provides incentive payments to the locator based on
11 the number of location and marking services performed or
12 from paying an employee or independent contractor based on
13 the number of location and marking services performed by an
14 employee or independent contractor. Additionally, the bill
15 prohibits a locator who has received a certificate from the
16 board from notifying the notification center that the locator's
17 services could not be completed as a result of a failure to
18 contact the excavator unless the locator includes in the
19 notification information related to the attempted contact.

20 The bill provides that an operator shall not be subject to
21 any action under new Code section 480.11.

22 The bill grants the utilities board the authority to adopt
23 rules to administer and interpret the provisions of the bill
24 relating to new Code section 480.11.